

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
FEBRUARY 4, 1997**

The one thousand seven hundred and sixtieth meeting of the Milwaukie City Council was called to order by Mayor Lomnicki at 7:00 p.m. in the Council Chambers at Milwaukie City Hall. The following Councilmembers were present:

Craig Lomnicki
Mayor
Carolyn Tomei

Jean Schreiber
Rob Kappa
Don Trotter

Also present:

Dan Bartlett,
City Manager
Charlene Richards,
Assistant to the
City Manager
Paul Elsner,
City Attorney
Angus Anderson,
Finance Director

Maggie Collins,
Community Development Director
Jim Brink,
City Engineer
JoAnn Herrigel,
Program Services Coordinator
Rafael Cruz,
Civil Engineer
Jay Saatkamp,
Operations Supervisor -- Water

CONSENT AGENDA

It was moved by Councilmember Kappa and seconded by Councilmember Tomei to adopt the Consent Agenda that consisted of the City Council minutes of January 21, 1997, and drafting revisions to the Center/Community Advisory Board bylaws. Motion passed unanimously.

AUDIENCE PARTICIPATION

Bruce Conachan, 12223 SE 22nd, Milwaukie, addressed the City Council on a drainage issue on his property. He was experiencing a water problem in his basement that he felt was a direct result of development on an adjacent property. He indicated his dissatisfaction that no measures had been taken by the City to help solve this problem. He said he had been in contact with the City Engineer and the City Manager on the issue.

The process started several months ago when the property next to his was divided for development. **Conachan** indicated he attended Planning Commission meetings in which the development was discussed. Included in the written material **Conachan** distributed to Council was a letter dated August 22, 1996, to Building Official Kenworthy outlining the problem. **Conachan** said he also submitted photographs of the construction site with this letter to illustrate his erosion control concerns. A large amount of dirt was pushed up against a cyclone fence and left there without any attempt to retain it. In addition, three large fir trees were removed from parcel 3 in July 1996. **Conachan** indicated his main concern was that the final grade would force water runoff to the north instead of to the west. He showed the City Council additional photos of the construction site, but these were not entered as an exhibit.

Mayor Lomnicki asked Conachan to indicate his property on the map. **Conachan** said his lot was 5200. He pointed out in the copy of his fax to Civil Engineer Roeger and Building Official Bennett that this was the first time in nineteen years he has had to clean up water in his basement. The new home acts as a dam, and the water flows north onto his property.

Conachan discussed his meeting with Roeger regarding the installation of a swale to direct water runoff. He understood from City staff the letter and photographs he sent to Kenworthy in August were lost. **Conachan** said he was not satisfied with Bartlett's response and noted the City's insurance carrier sent him a letter dated January 24, 1997. He read the letter from the Northland claims examiner indicating there would be an investigation.

After his December 26, 1996, conversation with Bartlett, **Conachan** contacted Gary Michael and Councilmember Tomei who suggested he address his concerns before the City Council. He reviewed his discussions with Roeger regarding a swale, but on January 14, 1997, the property was regraded with no swale. He and staff continued discussing the swale concept, but on February 2, 1997, Roeger told him that concept had been abandoned because the water ran that way naturally. City Engineer Brink agreed that the topology did not indicate the need for a swale.

Councilmember Tomei asked for clarification if the Schaeffer house had water in its basement before the new construction. **Conachan** said it had been dry until the new house was built. He walked the property with Roeger and Brink, and the driveway acted as a trough to carry the water. Staff decided the site needed more review, and they did not discount installing a swale that would empty onto 21st Street. He discussed the builder's responsibility.

Conachan felt very frustrated with staff since part of the Planning Commission agreement was drainage onto 21st Street. He was also concerned about taxpayers having to pick up costs for things the contractor should have done.

Mayor Lomnicki said he understood from Conachan's comments that staff's most recent recommendation was to construct a swale. **Conachan** said that was what Roeger told him today.

Mayor Lomnicki said the City's insurance carrier had contacted Conachan. **Conachan** said he received a letter, but he has not been in verbal contact with Northland. He said he was complaining about the lack of communication between City departments.

Councilmember Tomei said Conachan expressed his concerns at the Planning Commission variance hearing, and staff assured him this problem would not happen. **Conachan** said he was concerned about the dirt piled against the cyclone fence, but his main concern at this point was water runoff. He just wanted an operable swale collecting runoff to 21st Street and a way to get the water off his property.

Councilmember Kappa asked if water was still coming in his basement. **Conachan** said it does when there is a heavy rain or snow melt.

Councilmember Kappa asked if there was anything currently in place. **Conachan** said the contractor had done the final grading, and there was no swale construction. There were several hay bales between his and lots 9 & 10.

Bartlett said there is an open citizen request for service on Conachan's issue. Not being a civil engineer himself, he was unable to respond to some of the questions. The City of Milwaukie contracts with Northland Insurance to investigate and determine responsibility and any necessary compensation. The Northland letter is part of the standard process when the City receives a claim. City staff is to make no commitments from that point forward. City Council may meet in executive session to discuss the issue with legal counsel and the insurance carrier. These are mistakes that took place in the past, and now a drainage system must be installed in the neighborhood.

Councilmember Tomei asked the City's responsibility and what could be done to make sure the builder followed through. There seemed to be no problem before the new home was built.

Elsner responded his initial analysis was that the City had no liability. In this case, Conachan can identify the builder as the source of the problem. It is now an issue between the residents and the builder. The City is responsible for making sure the builder complies with the code. He assumed Northland would come to the same conclusion. Initially, he saw the City as not liable, and Conachan may have action against the developer.

Conachan said he did not understand why he needed to seek legal counsel if the City agreed a swale was necessary. He felt staff may have been swayed by the builder.

Bartlett said the Northland claims adjuster could best deal with the issue.

Mayor Lomnicki stated the insurance carrier investigates the facts to determine if there is a liability. City Council will hear Northland's conclusions in executive session. The City relies on engineers to make decisions, and if an individual disagrees with a decision or action, the insurance carrier acts as arbitrator.

Bartlett discussed a similar situation on Lake Road, and the work Northland was doing to solve the problem. Northland will consider what was said by Wade, Roeger, and Bartlett, and the adjuster will determine if the City is liable or if the resident should seek counsel. At this point, no determination can be made to remedy the problem.

Councilmember Tomei said she presumed none of this precludes agreements made with Brink and Roeger today. **Bartlett** said City staff cannot put in a swale. If staff agrees a swale is the solution, then it will send a letter to the developer to that effect and also let him know the insurance carrier is also working on the situation.

Conachan said staff decided on January 23 no swale was needed, but he did not find out until February. He indicated he was before the City Council on the advice of Councilmember Tomei and Gary Michael. He felt it was ridiculous the City cannot respond to what it says it will do.

Mayor Lomnicki explained the City Council would not take an action tonight and directed staff to keep it informed.

Conachan asked how long he would expect this situation to continue. **Mayor Lomnicki** felt the issue would be addressed as quickly as possible.

Councilmember Kappa asked if the City would be admitting liability if it assisted at this time. **Bartlett** said he did not feel the City should assist on private property.

Mayor Lomnicki said the City would send letters to the builder to clarify the situation. The City will continue to work through its insurance carrier and come to a conclusion as soon as possible.

Conachan asked how long he could expect to wait. **Mayor Lomnicki** suggested he continue to communicate with Brink or the City Manager. **Bartlett** said he would take responsibility for the contact.

PUBLIC HEARING

Transfer of Milwaukie Cable Television System from Jones Intercable to TCI

Mayor Lomnicki called the public hearing on the transfer of Milwaukie's cable television system from Jones Intercable to TCI at 7:55 p.m.

The purpose of the hearing was to consider public comment on the proposed transfer. He reviewed the conduct of the hearing.

Staff Report: **Herrigel** presented the staff report. The City of Milwaukie received an application for franchise authority consent to transfer the cable television franchise from Jones Intercable to TCI on November 15, 1996. The City has 120 days in which to take action. The purpose of the hearing is to get public input from which staff will notify Jones and TCI of any additional concerns. The current agreement expires June 1998, and, until that time, the current franchise is binding on the City of Milwaukie and the system operator. She noted the issues of providing a public access facility and giving senior discounts.

Councilmember Kappa asked when the City would begin negotiating a new franchise agreement. **Herrigel** responded the process began about eighteen months ago.

Councilmember Kappa commented there are issues outside the City's control at this time. **Herrigel** said that was correct, and these issues would be part of the franchise renewal process coming before the City Council at a future date. These issues would come before the City Council in the future as that process continues.

Correspondence: There was no additional correspondence other than that included in the packet. **Herrigel** received four phone calls mainly asking what transferring to TCI would mean to local service.

Audience Testimony: **Yvonne Haddix**, 20101 SE Fairway Drive, Boring, addressed the seniors' needs for a public access facility. The Milwaukie Center has enjoyed a good relationship with Jones over the past ten years, and she urged the City Council to consider senior needs for a local production site. She thanked the Jones staff for all the help and encouragement it has provided to area seniors.

Staff Comments: None.

Questions of Clarification: **Mayor Lomnicki** asked if there was anything in the current contract that stated the studio had to be within the City limits. **Herrigel** said she believed there was, and TCI indicated they did not plan to move the studio.

Councilmember Kappa asked if TCI maintained any other studios like this. **Herrigel** said she understood TCI contributed funds to studio operators as part of its franchise agreements. Staff is looking at the existing franchise to determine if Jones has been meeting its obligations for the past twelve years before the transfer takes place.

Councilmember Schreiber said from the wording it sounded like a “done deal.” **Herrigel** said the City has 120 days in which to deny or approve the transfer. If the City takes no action, the transfer will be automatically approved.

Mayor Lomnicki said, in working out the details of the potential transfer, the City wants to make sure the obligations within the agreement are being met before transfer is approved.

Close Hearing: **Mayor Lomnicki** closed the public testimony portion of the hearing at 8:07 p.m.

Discussion among Councilmembers: None.

OTHER BUSINESS

Findings of Fact and Conclusions of Law Regarding File VR-96-07

Collins presented the staff report describing the findings of fact and conclusions of law relating to file VR-96-07 as directed by the City Council on January 21, 1997. These findings include Exhibit A, a map; and Exhibit B, a memo from Public Works. The City Attorney has reviewed the findings, and staff requested they be adopted.

Mayor Lomnicki said the findings before the City Council at this meeting were amended from those in the original packet. He asked Collins to review these changes. **Collins** noted three changes: (1) in the original version, the section on exceeding the 120-day limit was a finding, but the attorney amended it to a footnote; (2) the language regarding the 120-day limit was deleted from the “Conclusion” introductory paragraph; and (3) the City Attorney added language to the same paragraph stating, “As appropriate, these conditions shall be considered as additions to any final decision approving a subdivision application affecting this property.”

Mayor Lomnicki said all parties will have the opportunity to express their concerns during the Planning Commission’s subdivision hearing process.

Councilmember Kappa said he felt the comment on the 120-day limit was confusing as a footnote since exceeding that limit was part of the decision for granting the variance.

Elsner said the 120-day limit was not a finding of fact. The findings of fact should reflect the code. That was the purpose for making it parenthetical and rephrasing it.

Councilmember Trotter felt item 2, *Pending Subdivision Application*, made the situation much clearer.

Marshall said he was told the City Council overturned the variance denial because of the 120-day clock. He asked if that was correct. **Mayor Lomnicki** responded the elements of the City Council discussion were put into findings of fact and conclusions of law to be considered and adopted at this meeting.

Collins said the City Council made its motion based on the staff report with the conditions.

Councilmember Trotter commented he concurred with the City Attorney's comments. Later in the January 21, 1997, Council discussion, he asked about adding language regarding the 120-day limit, and this document was in keeping with the manner in which he asked the question.

Councilmember Schreiber asked the City Attorney if she should vote since she was not at the previous meeting. **Elsner** recommended she not vote at this time since the issue was whether these findings and conclusions of law were an accurate reflection of that Council discussion.

It was moved by Councilmember Trotter and seconded by Councilmember Tomei to adopt the findings of fact and conclusions of law regarding file VR-96-07. Motion passed 4 - 0 - 1 with the following vote: Mayor Lomnicki, Councilmember Tomei, Councilmember Kappa, and Councilmember Trotter aye; no nays; Councilmember Schreiber abstained.

Mayor Lomnicki announced the decision could be appealed to LUBA within a 21-day time limit from the time it was signed and mailed.

Fiscal Year 1997 - 1998 North Clackamas Parks and Recreation District (NCPRD)
Budget Priorities for the City of Milwaukie -- Resolution

Richards presented the staff report. The City Council was asked to adopt a resolution communicating Milwaukie neighborhood funding priorities for fiscal year 1997 - 1998. She discussed the role of the Milwaukie Park and Recreation Board (PARB) and the process in which the Board established its priorities. Page two of the resolution was revised based on discussion at the City Council work session.

Jeff Marshall, 9901 SE 53rd, Milwaukie, addressed the City Council as PARB chair. The group recommended the following priorities: acquire land; upgrade existing facilities; maintain existing facilities and programs; develop youth facilities through partnerships; and improve communications with residents. The PARB requested City Council approve the proposal for fiscal year 1997 - 1998.

Councilmember Kappa and **Councilmember Tomei** commended the PARB and staff.

Councilmember Trotter said, for clarification, within the land acquisition recommendation, PARB and City Council wanted to target the Hector Campbell, Lewelling, and Island Station neighborhoods. The upgrading of facilities included completing the next phase of the Furnberg Park Master Plan; completing the first phase of Water Tower Park Master Plan; developing a Dogwood Park Master Plan with the Historic Milwaukie Neighborhood District Association (NDA); evaluating the best use of the Century Park Tennis Courts with the Lake Road NDA; developing a Wichita Park Master Plan with the Linwood NDA; and working with the Island Station NDA on the Spring Park facility.

Mayor Lomnicki commented on the previous goal of acquiring riverfront property as a regional facility. **Marshall** said the PARB did not discuss the riverfront since it was understood a Riverfront Master Plan was in process.

Richards said, for background, the PARB funding priorities were neighborhood parks, community parks, and finally regional parks. The PARB targeted those neighborhoods most in need of park facilities because the riverfront plan was well-covered through City Council goals and existing obligations.

Councilmember Kappa said he did not see regional facilities expenses coming out of neighborhood funds.

Councilmember Schreiber said she understood from the original agreement that a certain amount of money would be set aside for developing infill parks in Milwaukie elementary school attendance areas. She understood the PARB looked at individual neighborhood needs. The Board also indicated its support, but not funding, to the development of regional park facilities.

Councilmember Kappa responded he did not want to limit future possibilities. He wanted to send the message that the riverfront was a regional project, and the City did not necessarily want to use its parks funds.

Councilmember Trotter said as the Milwaukie Neighborhood representative to the NCPRD he would present these regional items as something the City Council feels strongly about but does not wish to fund from neighborhood money. He was comfortable with the recommendation as written since it provided both budgeting and Milwaukie Neighborhood information.

Mayor Lomnicki said he was also satisfied as long as it set the tone and message. The City of Milwaukie supports regional facilities but not from neighborhood parks funds.

Councilmember Kappa said skateboard parks and a community center are two examples of regional projects.

Councilmember Tomei said this is a priority list, and does not preclude the City's putting money into a regional project.

Councilmember Schreiber said a resolution expresses direction, and it is not a law.

Mayor Lomnicki felt the resolution as written set an appropriate tone.

Councilmember Trotter cautioned this was information for the NCPRD budget process, and some, all, or none of the money may be adopted in the District's fiscal budget. He felt the language was appropriate.

Bartlett added the City of Milwaukie is no longer a "protected class" since the five-year period has passed. We now must lobby for our projects with the other five neighborhoods.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to adopt the resolution establishing fiscal year 1997 - 1998 North Clackamas Parks and Recreation District Budget.

Councilmember Trotter asked if the City Council had the authority to say it shall receive or recommend. **Councilmember Schreiber** said she would like it stated in the strongest possible language.

Motion passed unanimously.

RESOLUTION NO. 6-1997:

**A RESOLUTION OF THE CITY OF MILWAUKIE, OREGON,
ESTABLISHING FISCAL YEAR 1997 - 1998 NORTH CLACKAMAS
PARKS AND RECREATION DISTRICT (NCPRD) MILWAUKIE
NEIGHBORHOOD PARKS FUNDING.**

Purchase Patrol Vehicles for Police Department

Bartlett presented the staff report in which the City Council was requested to authorize the expenditure of \$80,291 to purchase and equip three police patrol vehicles. He reminded the City Council of the Police Department budget and the City Council direction to continue with the purchase of the three patrol cars. The Chief of Police has identified funds to cover the amount over the allocation.

It was moved by Councilmember Kappa and seconded by Councilmember Tomei to authorize the expenditure of \$80,291 to purchase and equip three police patrol vehicles. Motion passed unanimously.

Award Bid for School Zone Flashing Yellow Signals

Cruz presented the staff report in which the City Council was requested to consider awarding the bid for the flashing yellow signal installation project to Tice Electric in the amount of \$29,312. He discussed an earlier work session in which the staff was directed to continue with the process. The City received two bids for the project. Clackamas County informed the City it could not do the project until July, and the cost was only \$200 per pole less than Tice.

Mayor Lomnicki said the bid is lower than anticipated. If City Council feels the project and location of the flashing yellow light is appropriate, it can vote to award the bid.

Councilmember Tomei asked why it was important to install the signals by July. **Cruz** said Tice could schedule the work immediately, and the project would be completed prior to the end of this school year. **Councilmember Schreiber** said she saw a benefit in that both the school children and the drivers could become accustomed to the signals.

It was moved by Councilmember Trotter and seconded by Councilmember Kappa to award the bid for the flashing yellow signal installation to Tice Electric in the amount of \$29,312.

Councilmember Kappa asked if Rowe Jr. High would be included under the School Trip Safety Program. **Bartlett** said it was decided at a work session that this would be more appropriately addressed in the Lake Road Multi-Modal Project. **Mayor Lomnicki** added the City Council identified elementary schools in the School Trip Safety Program, and he agreed Rowe would more appropriately work into the Multi-Modal Project.

Councilmember Trotter said he appreciated staff's expediting the project. **Cruz** said preliminary results of the 32nd Avenue traffic counts indicate flashing yellow lights have a positive impact on vehicle speeds.

Motion passed unanimously.

Purchase Standby Generators

Saatkamp presented the staff report in which the City Council was requested to authorize the City Manager to sign a purchase order to Christenson Electric, Inc., in the amount of \$119,755 for furnishing and installing standby generators for the Johnson Creek facility and Well #6 in the third pressure zone. These were combined to get a better price on the generators. Well #6 is one of the major storage sites and serves a major portion of the City. The City received five bids, and Christenson Electric, Inc., was the low bidder at \$119,755.

Councilmember Kappa asked if this was in the CIP, and **Saatkamp** indicated it was.

It was moved by Councilmember Kappa and seconded by Councilmember Tomei to award the bid to Christenson Electric, Inc., in the amount of \$119,755 for furnishing and installing standby generators for the Johnson Creek facility and Well #6. Motion passed unanimously.

Advance Refunding for 1990 Water Revenue Bonds and 1991 General Obligation Bonds -- Resolutions

Anderson presented the staff report in which the City Council was requested to adopt two resolutions authorizing advance refunding of two outstanding debt issues. One month ago the City Council directed staff to work with Securities Northwest. These were resolutions to actually authorize the action to take place. He discussed the current market situation.

He pointed out the differences between the draft resolutions in the original City Council packet and the final resolutions prepared by bond counsel. If City Council approves these resolutions, the final draft preliminary offering statement will be issued. The savings should be approximately \$110,000.

It was moved by Councilmember Tomei and seconded by Councilmember Kappa to adopt the resolution authorizing issuance and sale of general obligation refunding bonds, series 1997. Motion passed unanimously.

RESOLUTION NO. 7-1997:

A RESOLUTION AUTHORIZING ISSUANCE AND SALE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 1997.

It was moved by Councilmember Tomei and seconded by Councilmember Kappa to adopt the resolution amending and restating Resolution 25-1990 adopted July 10, 1990, authorizing the advance refunding of outstanding water revenue bonds, and providing the terms under which future revenue bonds may be issued. Motion passed unanimously.

RESOLUTION NO. 8-1997:

A RESOLUTION AMENDING AND RESTATING CITY RESOLUTION NO. 25-1990 ADOPTED JULY 10, 1990, AUTHORIZING THE ADVANCE REFUNDING OF OUTSTANDING WATER REVENUE BONDS, AND PROVIDING THE TERMS UNDER WHICH FUTURE REVENUE BONDS MAY BE ISSUED.

Appoint Center/Community Advisory Board Member

Mayor Lomnicki put forth Audrey Parsons' name as appointee to Center/Community Advisory Board position #6. Motion passed unanimously.

Information

1. **Councilmember Kappa** discussed the Regional Water Purveyors group.
2. **Councilmember Schreiber** announced she was no longer on the Board of Ratio Review.
3. **Councilmember Kappa** said he had not been able to attend the Clackamas Town Center Planning Committee meetings.
4. **Mayor Lomnicki** noted a Budget Committee meeting on February 5, 1997, at 7:00 p.m. in the Public Safety Building.
5. **Mayor Lomnicki** discussed an upcoming JPACT nomination.
6. **Bartlett** pointed out the Police Department annual report and particularly noted a 79% increase on DUII and a 140% increase of basic rule violation arrests. He also noted decreases in other areas.
7. **Councilmember Schreiber** said earlier this month she observed an incident with sixteen vehicles responding. She asked why there were so many. **Bartlett** said this was a pursuit and injury accident that included wreckers and ambulances.

ADJOURNMENT

Mayor Lomnicki adjourned the meeting at 9:40 p.m.

Pat DuVal, Recorder/Secretary